

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY MEEKS,

Plaintiff,

v.

Case No. 2:05-cv-193
HON. R. ALLAN EDGAR

FABIAN LAVIGNE, et al.,

Defendants.

/

MEMORANDUM AND ORDER

Plaintiff Anthony Meeks (“Meeks”), a Michigan state prisoner in the custody of the Michigan Department of Corrections, brings this *pro se* civil rights action under 42 U.S.C. § 1983. The defendants are Chippewa Correctional Facility former Warden Fabian Lavigne, current Warden Jeri-Ann Sherry (“Sherry”), Arum M. Mather (“Mather”), D. Danley (“Danley”), mail room employee John Doe, United States Postmaster Daniel Windsor, and United States Postal Service mail carrier John Doe.

In his complaint, Meeks alleges the following. Meeks avers that he handed two envelopes to defendant Mather for mailing. It is alleged that the envelopes contained a delayed application for leave to appeal Meeks’ Michigan state conviction and a disbursement for the Michigan Court of Appeals. The envelopes were addressed to the Third Circuit Court of Appeals Division. Meeks attempted to file an appeal from the denial of a motion for post-conviction relief from his judgment of conviction under Michigan Court Rule (MCR) 6.500. A motion under MCR 6.500 is not a direct

appeal from a judgment of conviction but rather a motion for collateral relief.

On September 28, 2004, Meeks learned that his MCR 6.500 motion had not been filed with the Michigan Court of Appeals. Meeks then contacted the United States Post Office in Gaylord, Michigan, and requested an explanation. The Post Office replied that it could not determine whether the specific items of mail had ever been received by or sent through the United States Postal Service. Meeks claims that the defendants have violated his right of access to the courts protected by the First and Fourteenth Amendments to the United States Constitution.

Defendants Sherry and Danley move for summary judgment pursuant to Fed. R. Civ. P. 56. [Doc. No. 72]. Meeks responded in opposition to the motion. [Doc. No. 81]. The motion was referred to Magistrate Judge Timothy P. Greeley for his report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1. On October 26, 2006, the Magistrate Judge submitted his report and recommendation. [Doc. No. 91]. The Magistrate Judge recommends that the motion for summary judgment be granted and that the complaint by Meeks against defendants Sherry and Danley be dismissed.

Meeks did not timely file an objection to the report and recommendation within the ten-day time limit. On November 6, 2006, Meeks moved for an extension of time to file an objection. [Doc. No. 92]. Meeks' motion for extension of time was denied by the Magistrate Judge. [Doc. No. 98].

On November 17, 2006, Meeks filed a late objection to the report and recommendation. [Doc. No. 102]. On the same date, November 17, Meeks also filed a document captioned "MOTION IN BRIEF IN OPPOSITION TO DEFENDANT'S (sic) SHERRY AND DANLEY MOTION FOR SUMMARY JUDGMENT." [Doc. No. 105].

After reviewing the entire record *de novo*, the Court concludes that the objection by Meeks

to the report and recommendation is both untimely and without merit. The objection is **DENIED**.

The Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, the motion by defendants Sherry and Danley for summary judgment [Doc. No. 72] **GRANTED** under Fed. R. Civ. P. 56. The complaint by plaintiff Meeks against defendants Sherry and Danley is **DISMISSED WITH PREJUDICE**. The only defendants remaining in this case are the John Doe defendants.

SO ORDERED.

Dated: December 1, 2006.

/s/ R. Allan Edgar

R. ALLAN EDGAR

UNITED STATES DISTRICT JUDGE